

CAUSE NO. 2012-33871

VINCENT PAUL YOUNG, Jr.

Plaintiff

v.

RONNIE T. PEOPLES,  
Individually and dba  
PEOPLES FINANCIAL  
SERVICE, Inc.,  
MAJOR L. ADAMS, II,  
PRO PLAYER FUNDING, LLC,  
DARIAN DASH and  
BRIAN J. JEDWAB

Defendants

IN THE DISTRICT COURT

281<sup>ST</sup> JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION,  
PETITION FOR DECLARATORY JUDGMENT, APPLICATION FOR TEMPORARY  
RESTRAINING ORDER & REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Vincent Paul Young, Jr. ("Young") files this Plaintiff's First Amended Original Petition, Petition for Declaratory Judgment, Application for Temporary Restraining Order and Request for Disclosure and in support hereof shows the following:

**A. Discovery Control Plan**

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that he seeks monetary relief aggregating more than \$50,000.

**B. Parties**

2. Plaintiff is an individual residing in Harris County, Texas.
3. Defendant Ronnie T. Peoples ("Peoples") is an individual who has previously

been served with process and made an appearance herein.

4. Defendant Peoples Financial Service, Inc., (“PFS”) is a foreign corporation which has previously been served with process and made an appearance herein.

5. Defendant Major L. Adams, II (“Adams”) is an individual who has previously been served with process and made an appearance herein.

6. Defendant Pro Player Funding, LLC (“Pro Player”) is a foreign corporation organized and existing under the laws of the state of Delaware, whose principal office is located at 152 West 57<sup>th</sup> Street, 54<sup>th</sup> Floor, New York, New York, 10019, and which may be served with process by serving its managing director, Brian Jedweb or Darian Dash, at that address.

7. Defendant, Darian Dash (“Dash”), an individual who is a nonresident of Texas, whose usual place of business is 152 West 57<sup>th</sup> Street, 54<sup>th</sup> Floor, New York, New York, 10019, may be served with process by the clerk of this court by mailing a copy of the citation, with a petition attached, to defendant at that address by certified mail, return receipt requested, delivery restricted to addressee.

8. Defendant, Brian J. Jedwab (“Jedwab”), an individual who is a nonresident of Texas, whose usual place of business is 152 West 57<sup>th</sup> Street, 54<sup>th</sup> Floor, New York, New York, 10019, may be served with process by the clerk of this court by mailing a copy of the citation, with a petition attached, to defendant at that address by certified mail, return receipt requested, delivery restricted to addressee.

### **C. Jurisdiction and Venue**

9. The amount in controversy in this action, exclusive of interest and costs, falls within the jurisdictional limits of this Court. Venue is proper in this Court under Sections 15.002, 15.005 and 15.035 of the Texas Civil Practice and Remedies Code.

#### **D. Factual Background**

10. Young is a professional quarterback whose primary residence is in Harris County, Texas. On or about January 18, 2006, Young executed an Authorization for Attorney in Fact (the "Authorization") in favor of Defendants Peoples and PFS. *See* Exhibit "A" attached hereto and incorporated herein by reference, a true and correct copy of the 2006 Authorization for Attorney in Fact. The Authorization was executed in Houston, Texas and was signed by Young and Peoples dba PFS. The Authorization states that it is to be governed by the laws of the State of Texas. Pursuant to the terms of the Authorization, Peoples and PFS were authorized by Young to act in his name and on his behalf in all financial matters. Young also indemnified Peoples and PFS against all claims, demands and losses which might arise from carrying out the authority granted to them.

11. On or about January 18, 2006, a Management Services Agreement (the "MSA") was executed by Peoples as President and CEO of PFS. *See* Exhibit "B" attached hereto and incorporated herein by reference, a true and correct copy of the Management Services Agreement. Pursuant to the MSA, Peoples and PFS agreed to advise, counsel and direct Young "in connection with all matters relating to Young's professional career." Ex. B at 1. The MSA is made effective as of January 18, 2006, and provides that it will run for the period of Young's current National Football League ("NFL") contract and/or for the duration of the next NFL contract entered by Young.

12. Pursuant to the MSA, Defendants Peoples and PFS specifically agreed to provide Young with financial planning, credit management, investment counseling, estate planning and bill paying among other services. In exchange for these services, Young agreed to pay Peoples and PFS a flat yearly fee of \$65,000.00. In addition, Young agreed to reimburse Peoples and

PFS for all out-of-pocket expenses incurred in connection with Defendants' services to Young.

13. On or about July 9, 2006, Young executed a Promissory Loan in favor of Peoples and PFS in the principal amount of \$765,234.52. See Exhibit "C" attached hereto and incorporated herein by reference. The loan had a stated interest rate of six (6) percent annually, but it contained an August 1, 2006 payment deadline for the amount of \$811,148.59. This payment would have resulted in Defendants Peoples and PFS earning 6% interest, or \$45,914.07, in twenty-two (22) days from their client. The loan was not paid on the stated date, and Young paid monthly "late fees" to PFS through March 2007 in the total amount of \$256,267.00.

14. During the time in which Peoples and PFS were operating under the MSA, PFS established several accounts in Young's name through which transactions were conducted. In late August of 2011, Young transferred management of his assets to a new firm, KM Capital Management. Upon completion of KM Capital's review of six (6) years' worth of Young's bank statements, significant transfers between Young's accounts and accounts owned by PFS were noted, as well as evidence of comingling Young's funds with PFS-owned accounts. This investigation revealed a substantial net transfer discrepancy in favor of PFS in the amount of approximately \$7.854M (i.e., PFS received \$7.854M more than it transferred over to Young's accounts).

15. \$700,000.00 of the net transfer discrepancy is comprised of a loan which was ostensibly made by a Dr. David Zehr ("Zehr") to Young, but which was actually paid to a PFS-owned account and subsequently assumed by Defendants Peoples and PFS (the "Zehr Loan"). The Zehr Loan was signed by Peoples as Young's attorney-in fact. See Exhibits "D" and "E" attached hereto and incorporated herein by reference, true and correct copies of the Zehr Loan and the related Deposit Account Control Agreement. Upon information and belief, Peoples

impersonated Young via email in order to secure this loan and forged Young's signature on the Deposit Account Control Agreement. Peoples also signed a personal guaranty on the Zehr Loan. See Exhibit "F" attached hereto and incorporated herein by reference, a true and correct copy of the Guaranty. Zehr is a resident of Texas and Zehr's attorney on the transaction is based in Houston, Texas. Attached hereto and incorporated herein by reference as Exhibit "G" is an e-mail purportedly from Young to Zehr's attorney claiming that Young "signed in the attorney [sic] in fact space." The e-mail address used, [vyoungceo@gmail.com](mailto:vyoungceo@gmail.com), is not Young's e-mail address and Young was neither aware, nor did he authorize, any party to act on his behalf in this matter.

16. When PFS was questioned about the net transfer discrepancy, Peoples provided a spreadsheet that supposedly showed \$8.797M of transfers to Young's accounts. However, upon review of the \$8.797M provided, \$2.068M were confirmed duplicates which had already been factored into the initial net transfer discrepancy of \$7.854M. In other words, PFS had already been given "credit" in that amount. Thus, the spreadsheet provided by Peoples, if completely confirmed and substantiated, would still leave a discrepancy of no less than \$1.126M.

17. Of the \$6.729M in total transactions that Defendants Peoples and PFS claim to have made out of Young's PFS business account on his behalf, the following transfers were made:

- a. \$275,756 which were listed as transfers to Young in Peoples' spreadsheet but which were not found coming in on Young's bank statements;
- b. \$3.1M in miscellaneous transfers/loan payments/bill payments/etc.;
- c. \$578,965 to PFS for "advisor fees" and "reimbursements";
- d. \$43,518 to Elton Lockins;
- e. \$75,000 to Felicia Young;
- f. \$1.18M to Major Adams;

- g. \$1.16M to Keith Young; and
- h. \$275,000 in attorneys' fees.

18. Subtracting the amounts listed in No. 17 above from the net transfer discrepancy leaves \$1.126M which is totally unaccounted for. Adding to this the \$5.12M from the above transactions which are of primary concern to Young (excluding those payments made to Elton Lockins, Felicia Young, Major Adams, and for attorneys' fees), and subtracting the \$700,000 which PFS paid on the Zehr loan, leaves Young in the unenviable position of losing no less than approximately \$5.5M while his assets were under PFS' control.

19. There was another approximately \$6.8M in "counter-withdrawals" and "debit memos," and another \$4M plus in checks, that are untraceable in Young's PFS-owned accounts.

20. When Young transferred management of his assets away from PFS, Peoples immediately closed all PFS/Young joint checking accounts.

21. During the relevant time period discussed above, Young's sports agent was Defendant Adams. Upon information and belief, Peoples and Adams undertook a series of financial transactions – both individually and collaboratively – aimed at defrauding Young of approximately \$5.5M while his assets were under PFS' control. To facilitate these fraudulent transfers from Young's accounts, Peoples and Adams resorted to a myriad of deceptive practices: impersonating Young in order to secure bogus loans in his name; forging Young's signature on financial documents; and using fake e-mail addresses in Young's name that Young neither authorized nor of which he was aware. Young alleges that Adams secured loans or lines of credit in an amount between \$200,000 and \$500,000 by impersonating Young via phone and/or e-mail and/or by forging Young's signature in order to pay-off or service Adams' personal debts. See Exhibit "H" attached hereto and incorporated herein by reference, documents showing one

such transaction.

22. Young further alleges that Peoples and Adams used their contracts with Young, as his financial advisor and agent, respectively, to defraud Young by negotiating contracts for Young with the Tennessee Titans and Philadelphia Eagles so that they could then reap the benefits of those contracts through their conspiratory actions. Young relied on Adams to negotiate for him and advise him of the terms of the contracts into which he entered, and Young relied on Adams to secure those contracts. Young paid Adams to represent him and this representation led to the negligent actions complained of herein.

23. When these transactions began to come to light, Young immediately terminated his relationship with Adams. Young also believes that Peoples and PFS repaid some of Adams' unauthorized debts by using Young's funds without his knowledge. It is Young's belief that Peoples and Adams came to an agreement on this course of action, and that this type of behavior on the part of Defendants Peoples and Adams accounts for some of the net transfer discrepancy.

24. Young was audited for 2006-2008 and it was found that there was some \$3M in marketing/endorsement income that had not been reported on Young's tax returns. Young was assessed (and paid in 2011) a tax bill of approximately \$1.4M on this income. During this time, marketing/endorsement income was paid directly to Adams and another individual who were trusted to take their own fees out and forward the net to Young. Adams had multiple joint accounts with Young and could therefore withdraw funds at will. Peoples informed Young that the tax bill had already been paid, knowing full well that it had not. (Indeed, Peoples would eventually arrange the Pro Player Loan, discussed below, knowing that the IRS debt was still outstanding, a direct contravention of certain Pro Player Loan agreements).

25. Unfortunately, Young did not discover the massive fraud against him before

Peoples and Adams engaged in further self-dealing by collaborating to obtain a high-interest loan in the amount of nearly \$1.9 million from Pro Player. Upon information and belief, Peoples and Adams conspired to obtain this loan from Pro Player without informing Young, and with Peoples acting as the primary contact with Pro Player's representatives. On or about May 17, 2011, Young purportedly entered into a Loan and Security Agreement with Pro Player in the total amount of \$1,876,876.88 (the "Pro Player Loan"). Among the additional documents Young was required to execute as the "borrower" in order to close the Pro Player Loan were the following:

- i. Promissory Loan in the amount of \$1,876,876.88;
- ii. Escrow Agreement, under which certain of Young's salaried/bonus payments are subject to deposit in an escrow account and subsequent dispersal to Pro Player;
- iii. Employer Agreement, pursuant to which Young and his then-current employer irrevocably agreed that all sums payable to Young from his employer are subject to deposit in the escrow account;
- iv. Confessions of Judgment, pursuant to which Young as the borrower confessed judgment to Pro Player for all sums due and owing under the Loan; and
- v. Closing statement detailing the sources of funds and disbursement of funds under the Pro Player Loan.

26. Pro Player retained \$619,112.26 as prepaid interest and required an insurance policy to be procured with a premium of \$92,824.54. After other disbursements, Young was ostensibly to receive a total of \$1,104,902.54. When this amount posted to one of Young's accounts, almost all of it was immediately transferred over to a PFS-owned account, without Young's knowledge or permission, and Young did not retain a dime of the purported "loan" proceeds. See Exhibit "I" attached hereto and incorporated herein by reference, documents related to the Pro Player Loan. The Pro Player Loan had a maturity date of January 7, 2013 but



also contained a Prepayment Notice pursuant to which either party could choose to change the maturity date to January 4, 2012. Pro Player delivered a Prepayment Notice to Plaintiff on or about August 12, 2011. The Pro Player Loan had an interest rate of twenty-four (24) percent pursuant to the Prepayment Notice, which could fluctuate up to thirty-four (34) percent in the event of default.

27. It is Young's contention that the Pro Player Loan is a contract of adhesion, was so one-sided as to be unconscionable at the time of its making, and was not voluntarily entered into by Young. Young did not agree to the terms of the Pro Player Loan, has no recollection of executing the signature pages of these documents, and certainly never executed any long, complicated legal documents for this transaction. Michael W. Simon, an attorney with the law firm of Simon & Sigalos, LLP located in Boca Raton, Florida, communicated with Peoples by e-mail to provide advice about certain of the Pro Player Loan documents, but none of those communications were sent to Young himself or forwarded to Young by Peoples. Simon also exchanged e-mails and documents regarding the Pro Player Loan directly with Defendant Dash, a senior executive with Pro Player, and Pro Player's transactional counsel in New York. Again, Young was not included on any of these e-mail communications. Young has no recollection of ever discussing the Pro Player Loan with Mr. Simon or any other attorney.

28. If Young did in fact sign the signature pages, which he contests, Young did so without the corresponding documents attached and without knowledge as to what the signature pages referred. In this regard, it should be noted that although the notarized signature pages are dated May 4, 2011, the agreements themselves are dated May 17, 2011, almost two weeks *after* Young allegedly executed the documents. Further, the signature pages are separate from any of the provisions of the various documents, and it is Young's position that the signature on these

documents is not Young's authentic signature, or, in the alternative, that these signatures were obtained by Peoples for what Young believed to be other business documents. In any event, no notary was in Young's presence for the signing of any of these signature pages.

29. Young received improper and erroneous advice from Peoples and Adams as to the need for taking out many different loans, and their fraud, misrepresentation and deceit should be construed to void the terms of the Pro Player Loan. Upon information and belief, Young alleges that Peoples and Adams worked together to deceive Young into entering the Pro Player Loan so that their own debts could be repaid and/or serviced. To reach their objective, Defendants either presented only signature pages to Young and misadvised him as to what the pages referred, or Defendants forged his signature on the documents.

30. For its' part, Pro Player entered into this purported loan without taking any reasonable steps to ensure that Young was *actually* aware of or authorized the transaction. That was so despite the fact that, among other things: (i) the onerous terms of the loan, including its very high interest rate, large immediate prepayment of interest (after that prepayment and the deduction of various expenses only about 59% of the proceeds were being paid over to Young); (ii) Young purportedly executed the loan documentation 13 days before the documents themselves are dated; and (iii) the signature pages on the loan documents are on separate, unpaginated sheets so there is no assurance that Young was presented with accurate or complete copies of documents. These were, of course, facts that Pro Player well knew or should have known.

31. Indeed, a month *before* the Pro Player Loan was finalized in May of 2011, Dash provided an interview to Yahoo!'s online sports magazine in which he publicly "expressed concern that players might be entering into these [high risk] agreements without competent legal

counsel...” Rand Getlin, *Cash-Strapped; See* Rand Getlin, *NFL Players Seeking High-Risk ‘Lockout Loans’*, ThePostGame.com (April 12, 2011).<sup>1</sup> Having openly acknowledged the inherent potential for abuse with such predatory loans to NFL players, Dash and Pro Player nevertheless facilitated the very same type of high-risk loan to Young without making a modicum of effort to ensure that Young himself was aware of the loan – let alone that he fully understood the extraordinarily onerous terms thereof. The circumstances of this loan should have given rise to grave suspicions on the part of Pro Player as to whether the transaction was legitimate. Pro Player, however, turned a blind eye to these facts because doing so meant that it would profit in the amount of approximately \$620,000.00. It is Young’s belief that Dash and Jedwab intentionally conspired with Peoples and Adams so that the Pro Player transaction would be consummated and they would realize this profit.

32. On or about November 1, 2011, Young and PFS entered into an Agreement and Mutual Release, whereby the parties terminated their business relationship and released each other from various responsibilities (the “Release”). Most significantly, the Release absolves Young of his personal guaranty of \$1.9M in loans from PFS to Adams and \$500,000 in loans from PFS to Keith Young. See Exhibit “J” attached hereto and incorporated herein by reference. The Release also specifically reserves any claims the parties may have against each other related to the Zehr Loan.

33. Despite repeated inquiries to Peoples and Adams, Young does not know the current status of, the location of, or who controls the missing funds, including proceeds of the Pro Player Loan. Young has reason to believe that most, and possibly all, of these funds have been misappropriated, improperly converted, and/or squandered by one or more Defendants.

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<sup>1</sup> Available at <http://www.thepostgame.com/features/201104/tpg-exclusive-cash-strapped-nfl-players-seeking-high-risk-lockout-loans>.

### **E. Suit for Declaratory Relief**

34. **Fraudulent Inducement/Fraud.** Plaintiff contends that he was fraudulently induced to enter the Pro Player Loan. As outlined above, Plaintiff was never provided with the documents comprising the Pro Player Loan, and no one spoke with Plaintiff regarding the terms of the Pro Player Loan. Plaintiff believes that he did not sign the Pro Player documents and that the signatures on the Pro Player documents are forgeries. Further, Plaintiff believes that if the signatures on the Pro Player documents are lawful signatures, he was presented with only signature pages without corresponding documents and deceived as to what he was signing. For its part, Pro Player overlooked the deception and lack of communication with Plaintiff so that it could make the predatory loan. The actions of Defendants as set forth above constitute fraudulent inducement. Defendants made false representations to Plaintiff to induce Plaintiff to execute the Pro Player Loan. Plaintiff would not have executed the Pro Player Loan but for the representations of Defendants, which proved to be false.

35. The actions of Defendants as set forth above also constitute common law fraud. Defendants made these material representations to Plaintiff with knowledge that the representations were false. Defendants made the representations intending that Plaintiff act on them and with an intent to deceive him. Plaintiff did in fact rely on Defendants' representations in financial matters, and Defendants' representations have therefore caused Plaintiff harm. Plaintiff requests that this Court declare that Defendants fraudulently induced Plaintiff to enter into the Pro Player Loan, that Defendants' actions also constitute common-law fraud, and that as a result the Pro Player Loan is void from its inception as concerns Young and he is not bound by its terms.

36. **Attorney Fees.** Plaintiff is entitled to recover reasonable and necessary attorney

fees that are equitable and just under Texas Civil Practice & Remedies Code section 37.009 because this is a suit for declaratory relief.

#### **F. Causes of Action**

37. **Conspiracy to Commit Fraud.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. Based on the allegations presented above, Defendants are liable for conspiracy to commit fraud. Defendants were members of a combination of two or more persons, the object of which was to accomplish the unlawful purpose of defrauding Plaintiff. Defendants had a meeting of the minds on this object or course of action, and one or all of them committed unlawful, overt acts to further the object or course of action. Young suffered injury as a proximate result of these wrongful acts.

38. **Assisting or Encouraging.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. The actions of Defendants Peoples and Adams as set forth above subject them to a claim for assisting-or-encouraging liability. In this case, Defendants Peoples and Adams both owed Young a fiduciary duty to act in his best interest. They have also both breached that fiduciary duty as shown by the facts above by enriching themselves at Young's expense and by violating Young's trust. The Texas Supreme Court has recognized that a defendant is subject to liability for harm to the plaintiff resulting from the tortious conduct of the primary actor if the defendant "knows that the [primary actor's] conduct constitutes a breach of duty and gives substantial assistance or encouragement to the [primary actor]". *Juhl v. Airington*, 936 S.W.2d 640, 644-45 (Tex. 1996). In addition, Young alleges that Peoples and Adams knew of the other's tortious conduct and intended to assist the other in committing these torts. Both Peoples and Adams can be liable for assisting and encouraging the other under the circumstances presented here.

39. **Assisting & Participating.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. The actions of Defendants Peoples and Adams as set forth above subject them to a claim for assisting and participating liability. In this case, Defendants Peoples and Adams both owed Young a fiduciary duty to act in his best interest. They have also both breached that fiduciary duty as shown by the facts above by enriching themselves at Young's expense and by violating Young's trust. Defendants Peoples and Adams can be liable for assisting and participating upon a showing of the following: the primary actor's activity accomplished a tortious result; the defendant provided substantial assistance to the primary actor in accomplishing the tortious result; the defendant's own conduct, separate from the primary actor's, was a breach of duty to the plaintiff; and the defendant's participation was a substantial factor in causing the tort. Both Peoples and Adams can be liable for assisting and participating with the other under the circumstances presented here.

40. **Fraud/Fraudulent Misrepresentation.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. The actions of Defendants Peoples and Adams as set forth above constitute common law fraud and fraudulent misrepresentation. Defendants represented that they would manage Young's assets and career professionally and honestly. Defendants made these material representations to Young with knowledge that the representations were false and with an intent to deceive him. Defendants made the representations intending that Young act on them. Young did in fact rely on Defendants' representations in determining to allow Defendants to manage his assets and career, and Defendants' representations have caused Young harm.

41. **Conversion.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. In order to establish a claim for conversion, Young must prove that he owned or had the

right to immediate possession of personal property; that Defendants wrongfully exercised dominion or control over the property; and that Young suffered injury. Based on the foregoing allegations with respect to sums of money which were withdrawn from joint PFS/Young accounts and which cannot be accounted for, sums which were ostensibly loaned to Young but which were used to repay or service Defendants Peoples and Adams' debts, as well as sums which Defendants claim were transferred into Young's accounts but which cannot be found, Young has stated a claim for conversion.

42. **Breach of Fiduciary Duty.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. Young and Defendants Peoples and Adams had a fiduciary relationship pursuant to which Defendants were to act in Young's best interest in all matters pertaining to Young's finances and career. This duty included the duty to exercise reasonable and prudent supervision over the management and financial affairs of Young, and fiduciary duties of loyalty not to divert or otherwise use Young's assets for their own gain. Defendants received compensation and other compensatory benefits from Young. Defendants have breached their fiduciary duties of care and loyalty to Young by failing to adequately supervise the management and financial affairs of Young, co-mingling Young's assets with the assets of Defendants, misappropriating Young's assets, and falsifying client documents as outlined above. Defendants' breach has resulted in both injury to Young and benefit to Defendants at Young's expense.

43. **Negligence and/or Negligent Misrepresentation.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. Defendants Peoples and Adams had duties and obligations to Young as his Attorney-in-Fact and manager, including the duties to exercise reasonable care in the management and financial affairs of Young and not to divert or otherwise

use Young's assets for their own gain. Defendants breached these duties when they made material and false representations to Plaintiff in the course of transactions in which Defendants had a pecuniary interest. Defendants also supplied false information for the guidance of Plaintiff, co-mingled the assets of Young with Defendants' assets, misappropriated Young's assets, and falsified client statements as detailed above. Defendants did not exercise reasonable care or competence in communicating information to Young, and Young justifiably relied upon this information to his detriment. Defendants' breach proximately caused Young's injury.

44. **Usury.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. As set forth in paragraph no. 11 above, on or about July 10, 2006 Defendants Peoples and PFS loaned Young the principal amount of \$765,234.52. Young had an absolute obligation to repay the principal. The Loan had a stated interest rate of six (6) percent annually, but it contained an August 1, 2006 payment deadline for the amount of \$811,148.59. This would have resulted in interest charges of \$45,914.07 in twenty-two (22) days. The Loan was not paid on the stated date, and Young paid monthly "late fees" to PFS through March 2007 in the total amount of \$256,267.00. These charges exceed the maximum amount allowed by law.

45. **Money Had and Received.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. Defendants currently hold an identifiable sum of money which in equity and good conscience belongs to Young. Young seeks to recover such funds from Defendants, as well as court costs and exemplary damages for Defendants' fraudulent and malicious withholding of such funds from Young.

46. **Theft Liability Act.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. Young had a possessory right to the sums of money and other assets under Defendants Peoples and Adams' control. Defendants unlawfully appropriated or stole Plaintiff's



property. This unlawful taking was made with the intent to deprive Young of his property, and Young sustained damages as a result of the theft. Plaintiff seeks actual damages, exemplary damages, and costs.

47. **Breach of Contract.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. As outlined above, the MSA is a valid, enforceable contract between Young and Defendants Peoples and PFS. As such, Plaintiff is a proper party to sue for breach of the contract. Plaintiff performed his contractual obligations, but Defendants breached the contract as outlined above. This breach caused Young injury.

48. **Unjust Enrichment.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. Defendants have unjustly taken and have refused to return Young's money as outlined above. Defendants' actions, in taking sums of money to which they were not entitled, and in not distributing sums to Young to which he was entitled, have resulted in the unjust enrichment of Defendants at the expense of Young. Young has suffered damages in excess of the minimum jurisdictional limits of this Court. Plaintiff seeks his actual damages and costs.

49. **Gross Negligence/Malice.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. Defendants' actions or omissions as outlined above constitute gross negligence because when viewed objectively from Defendants' standpoint at the time they occurred, those actions or omissions involved an extreme degree of risk considering the probability and magnitude of the potential harm to Plaintiff. In the alternative, Defendants had actual, subjective awareness of the risk but proceeded with a conscious indifference to the rights, safety or welfare of Plaintiff. Defendants had a specific intent to cause substantial injury or harm to Plaintiff. Plaintiff seeks actual damages, exemplary damages, and costs.

50. **Intentional Interference with Prospective Business Relations/Contract.**

Plaintiff incorporates the preceding paragraphs as if repeated fully here. Young had a one-year contract with the Buffalo Bills and was competing to secure a quarterback position at the time that Defendants Pro Player, Dash and Jedwab intentionally interfered with that relationship by engaging in intimidating and harassing judgment enforcement tactics which are described more particularly below. This behavior on the part of Defendants constitutes the tort of intentional interference with prospective business relations/contract.

51. **Intentional Infliction of Emotional Distress.** Plaintiff incorporates the preceding paragraphs as if repeated fully here. Defendants Pro Player, Dash and Jedwab have harassed and degraded Plaintiff repeatedly since declaring that an event of default had occurred under the Pro Player Loan. This has taken the form of harassing and intimidating Plaintiff and his prospective employer. Knowing full well that Young was challenging the validity of the Pro Player Loan based on his former representatives' fraudulent conduct – and also knowing full well that Young was competing in pre-season training camp to secure a quarterback position on the Buffalo Bills – Pro Player needlessly harassed both Young and the Buffalo Bills by subjecting them to a relentless series of improper judgment enforcement tactics. These threats and comments have caused Plaintiff severe emotional distress and constitute the intentional infliction of emotional distress.

**G. Exemplary Damages**

52. Plaintiff incorporates the preceding paragraphs as if repeated fully here. Plaintiff is entitled to exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code Chapter 41 because his injuries resulted from Defendants' gross negligence, malice, or actual fraud. Specifically, Plaintiff can recover exemplary damages on his claims for fraud, breach of fiduciary duty,

money had and received, theft liability act, negligence, gross negligence, forgery, misapplication of fiduciary property, and securing the execution of documents by deception.

#### **H. Application for Temporary Restraining Order**

53. Plaintiff's application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code §65.011(2).

54. Plaintiff asks the court to prevent Defendant Pro Player from attempting to enforce its' Judgment by Confession, obtained in the County of New York, State of New York, at Index No. 12103168, through execution in Texas against Young's assets located in Texas. *See* Ex. "K" attached hereto and incorporated herein by reference. Attached hereto as Exhibit "L" is Young's Verified Complaint filed before the Supreme Court of the State of New York seeking to vacate the Judgment by Confession on the grounds, among others, that the Pro Player Loan was fraudulently obtained by Peoples and Adams for their own financial gain.

55. It is probable that Plaintiff will recover from Defendants after a trial on the merits because there is ample evidence that Plaintiff was fraudulently induced to enter into the Pro Player Loan, as well as ample evidence that Defendant Pro Player has engaged in this type of conduct before. If Plaintiff's application is not granted, harm is imminent because the recent public disclosure and ensuing rumors of Young's alleged default on the Pro Player Loan, as well as the harassing efforts of Player's counsel in seeking discovery from both Young and the Buffalo Bills, has coincided during a particularly critical period in Young's NFL career – with potential lasting implications for the upcoming season and beyond.

56. Young signed a one-year contract with the Buffalo Bills earlier in the year and began training camp in July 2012. Pro Player improperly attempted to serve Young with papers while he was at the Bills' practice facility during training camp. (*See* Dolezal Affidavit attached

hereto as Ex. "M"). In addition, counsel for Pro Player has threatened Young with a series of harassing enforcement tactics, including "involve[ing] the sheriff even if that means forcibly removing [Young] from practice", and noting in e-mail correspondence to the undersigned that "[w]e have at least one of [Young's] bank accounts with sufficient funds to cover this tied up and will have others similarly situated very soon." *Id.* The harm to Plaintiff's reputation will be irreparable if the temporary restraining order is not issued. Upon information and belief, Pro Player's harassment and intimidation of Plaintiff and various Bills' staff members played a role in the Bills' decision to release Plaintiff from his contract on approximately August 27, 2012. Allowing Pro Player to continue in its aggressive judgment enforcement techniques for a transaction which was, at best, unsavory, and at worst a criminal fraud is entirely inappropriate and unfair to Young. A temporary restraining order is appropriate here because Young contests the validity of Plaintiff's judgment, which is based on a purported loan transaction with incredibly onerous terms, about which he was never advised, never knowingly signed (if he signed at all), never received the funds, and was plainly part and parcel of a scheme to defraud him. Plaintiff has no adequate remedy at law for this harm. Plaintiff is willing to post bond.

57. Plaintiff attaches his own affidavit as Exhibit "N" to prove the allegations in this application for injunctive relief and incorporates it by reference.

#### **I. Request for Temporary Injunction**

58. Plaintiff asks this Court to set his application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendant Pro Player.

59. Plaintiff has joined all indispensable parties under Texas Rule of Civil Procedure 39.

**J. Request for Permanent Injunction**

60. Plaintiff asks this Court to set his request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against Defendant Pro Player.

**K. Damages**

61. Plaintiff seeks to recover his actual damages from Defendants, as well as all consequential and exemplary damages to which he may be entitled.

62. Plaintiff seeks to recover attorneys' fees, prejudgment interest, post-judgment interest, and court costs.

63. Plaintiff also seeks to recover all other remedies, both in law and in equity, to which he may be entitled.

**L. Jury Demand**

64. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

**M. Request for an Accounting**

65. Plaintiff requests a complete accounting of all the corporate books related to PFS' finances and transactions since the dates of the agreements with the Plaintiff as well as any debts, loans or sales that have taken place during that same time frame.

**N. Conditions Precedent**

66. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

**O. Request for Disclosure**

67. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

**P. Prayer**

68. For these reasons, Plaintiff asks that Defendants be cited to appear and answer herein and that the Court grant the following relief:

- a. Actual damages as found by the trier of fact;
- b. Exemplary damages as found by the trier of fact;
- c. Costs of court;
- d. Attorneys' fees; and
- e. Such other relief to which Plaintiff may be entitled.

Respectfully submitted,

**KASLING, HEMPHILL,  
DOLEZAL & ATWELL, L.L.P.**

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By: 

Trey L. Dolezal

State Bar No. 00783972

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

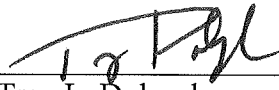
I hereby certify that a true and correct copy of the foregoing was served via ☒ e-mail, ☐ certified mail, return receipt requested, ☒ fax (AMENDED PETITION ONLY), ☐ regular mail, or ☐ hand delivery on the following counsel of record on September 11, 2012.

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Trey L. Dolezal